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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 664

UNITED STATES STEEL CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

REPLY BRIEF OF PETITIONER

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1. Respondent argues that the decision below is not in conflict with the recent decision of the Seventh Circuit in *American Steel Foundries* v. *Sauber*, ... F. 2d ....., 56-2 USTC Par. 10,081. The Court there held that the dedication of an amount to capital is not subject to tax unless it is "accompanied by" the issuance of stock. In the present case, petitioner argued that the tax was improperly imposed because ~~of~~ the rededication of capital and the issuance of stock were two separate and distinct transactions. While the Court found that the two were parts of one plan, it stated in the alternative:

> "And even if they should be considered as separate transactions, it would not change the result." (Pet. 20.)

Perhaps respondent intends to file a petition for a writ of certiorari in the *American Steel Foundries* case. If such a petition is to be forthcoming, it is respectfully suggested that this Court defer action on this petition in order that both petitions, in these related cases, may be considered together.

2. Respondent dismisses the conflict between the decision below and the decision in *United States* v. *Pure Oil Co.*, 135 F. 2d 578 (7th Cir. 1943), because "the decision below is based, not on book entries alone, but rather on what was actually done." (Resp. Br. 6.) It is impossible to see how this reconciles the two decisions, since "what was actually done" by petitioner was merely the making of book entries.

3. Respondent argues (Resp. Br. 6) that the decision of the Court below was correct, on the ground that "where *funds* transferred from a corporation's earned or capital surplus account cannot be shown to have been previously dedicated to capital, it is universally held that they are subject to the stamp tax imposed by Section 1802(a)." (Emphasis added.) However, the cases cited by respondent in support of this proposition are all cases decided under the statute as it existed prior to the addition in 1947 of the recapitalization proviso to Section 1802(a). As petitioner has pointed out in its petition (Pet. 9-10), the recapitalization proviso requires for exemption from the issue tax only that the *amount* of the restoration to capital be an *amount* which was not previously dedicated to capital, and does not require any tracing of *funds*. Since none of the cases cited by respondent involved the statutory provision involved here, they cannot be considered as establishing any applicable "well settled doctrine" (Resp. Br. 6).

4. The ground stated in the petition for the granting of a writ of certiorari is the existence of conflicting decisions. However, petitioner does not agree with respondent's statement (Resp. Br. 8) that "the question is not an important one." Entirely aside from the fact that the amount in controversy in this case is substantial, unless there is a decision by this Court on the question involved a great deal of litigation is to be expected. Prior to the addition in 1947 of the recapitalization proviso to Section 1802(a) of the 1939 Internal Revenue Code there was extensive litigation as to what was an original issue of stock in recapitalization situations. (See, *e.g.*, cases cited at Pet. 9.) A similar volume of litigation can be expected if this Court does not settle the meaning of the recapitalization proviso. We can make this statement with confidence in view of the numerous inquiries we have received from taxpayers similarly situated who are interested in the outcome of this litigation.

Conclusion.

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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